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Name: CAROL A. McALONIS

Signature: Carol A. McAlonis

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Craun, et al.)
Serial No. 09/839,049) Examiner: William K. Cheung
Filed: April 23, 2001) Group Art Unit: 1713
For: ODOR FREE POLYLACTIC ACID) Attorney Docket No.: 10529
MODIFIED AQUEOUS EMULSION)
PAINTS FREE OF VOLATILE)
COALESCING ORGANIC SOLVENT))

SECOND PETITION TO WITHDRAW HOLDING OF ABANDONMENT

BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The Petition Decision (Paper No. 8) relative to Applicants' first Petition to Withdraw Holding of Abandonment Based on Failure to Receive Notice of Allowance was mailed by the Patent Office on August 27, 2003. Even though a Revocation and Power of Attorney and Appointment of New Attorney along with an address change was filed on April 16, 2003, Applicants did not receive a copy of the Petition Decision. In September 2003, Applicants' office contacted the Patent Office by telephone to determine the status of the Petition. Applicants were advised in that telephone conversation that the Petition was denied on August 27, 2003, and Applicants requested a copy of the Petition Decision.

Since September 2003, Applicants' representatives made many contacts and had many referrals within the U.S. Patent and Trademark Office between the Examiner, the Group Director's office, and the Petitions Office, and on July 27, 2004, Applicants received a copy of the USPTO's Decision on Applicants' Petition dated April 16, 2003.

The Petition Decision states that the evidence included in Applicants' petition is insufficient to establish that the Notice of Allowance and Issue Fee Due form was not received. This was concluded allegedly because Applicants had submitted docket records showing that the Examiner's Amendment was received on behalf of Applicants on October 31, 2002. The Decision noted that the Examiner's Amendment would be a part of the Notice of Allowance and Issue Fee Due.

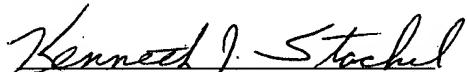
Actually, the entry in the docket record for receipt of the Examiner's Amendment was made on April 16, 2003. This was the earliest date of receipt of the Examiner's Amendment. The receipt was from a facsimile transmission of April 16, 2003 which included the Notice of Abandonment (dated March 17, 2003), Notice of Allowance and Fees Due (dated November 5, 2002), Notice of Allowability and Examiner's Amendment (dated October 31, 2002) all from Bessie Bowie of the 700 Technology Customer Service Office. Please see a copy of the dated facsimile attached to the Affidavit of Dawn Madison attached hereto. The Examiner's Amendment included in the facsimile transmission of April 16, 2003 was entered into the docket system for Applicants as shown in Dawn Madison's Affidavit. The data was recorded so that Applicants had a record of the case's history prior to the Notice of Allowance. Hence the entry on the docket record attached to the Petition to Withdraw the Holding of Abandonment filed April 16, 2003 is the "base date" of or the date for the Examiner's Amendment itself, and not the date of receipt of the Examiner's Amendment. The actual date of receipt of the Examiner's Amendment as noted above was on April 16, 2003 from the facsimile transmission. The entry of the "base date" into the docket system for the Examiner's Amendment was made from the facsimile copy of April 16, 2003 so the entry was not actually made until after receipt of the Examiner's Amendment on April 16, 2003.

Since the first time the Notice of Allowance was actually received by Attorney for Applicants was April 16, 2003, a full 2 months after the expiration of the time for paying the issue fee as shown in Dawn Madison's Declaration, Applicants request withdrawal of the Notice

of Abandonment and resending of the Notice of Allowance. This will allow Applicants for the first time to actually have the opportunity to pay the issue fee.

Based on the foregoing and in accordance with *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C., 1970), a copy of which is enclosed herewith, Applicant respectively requests withdrawal of the Notice of Abandonment and re-issuance of the Notice of Allowance. In *Delgar* the court granted relief to the patent applicant where his attorneys failed to receive a notice of allowance, even though such notice had, in fact, been mailed by the Patent Office. Indicating that there was difficulty in determining whether notice of allowance was or was not received, the court interpreted the circumstances as constituting a rare situation to be accommodated. Therefore, the court deviated from the strict letter of § 151 in making its determination and issued another Notice of Allowance.

Respectfully submitted,



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2 of 2 DOCUMENTS

DELGAR INC. et al. v. SCHUYLER, Comr. Pats.

No. 1904-70

United States District Court for the District of Columbia

1970 U.S. Dist. LEXIS 9062; 172 U.S.P.Q. (BNA) 513

Dec. 22, 1970, and Jan. 4, 1971

COUNSEL: [*1]

GEORGE R. DOUGLAS, JR., and MISEGADES & DOUGLAS, both of Washington, D.C., and NOLTE & NOLTE, A. C. NOLTE, JR., EDWARD B. HUNTER, and EVELYN M. SOMMER, all of New York, N. Y., for plaintiffs.

S. WM. COCHRAN and J. F. NAKAMURA for defendant.

OPINIONBY:

PRATT

OPINION:

PRATT, District Judge.

Mr. Nakamura: If the Court please, this case is a patent case. It involves Section 151 of the Patent Statute. Section 151 provides that a written notice of allowance shall be mailed to the applicant.

This notice of allowance calls for payment of an issue fee. If that issue fee is not paid within six months, the application is regarded as irrevocably abandoned by operation of the statute.

Now, in the present case, the record shows that such a notice of allowance was mailed. The issue fee was not paid within the six months.

The application, therefore, in the eyes of the Patent

Office, stands abandoned by operation of the statute.

Now, plaintiffs' claim for relief is based solely on their allegation that no notice of allowance was received by their attorneys.

We submit that the statute provides no basis for relief.

First of all, Section 151 does not expressly require that a notice [*2] of allowance be received by the applicant. In Section 151 there appears only the term "mail a written notice" -

The Court: Is there any provision for publication of allowances?

Mr. Nakamura: No, Your Honor, there is not.

The Court: Are they customarily published?

Mr. Nakamura: No, they are not customarily published. The notice is mailed. In the great majority of the cases, it is received. Occasionally it is not, for one reason or the other.

In this case the applicant has only alleged that it has not been received.

Now, there is a long-standing construction of the term "mail" in the Patent Office. This is a construction which excludes receipt. This is a construction which dates back at least 50 years, and long prior to the enactment of Section 151, which was enacted in 1965.

I can show Your Honor representative decisions that

have been handed down by past Commissioners, Ex parte Lacey, for example, in 1920 C.D. 83, and Ex parte Glake in 1906 C.D. 159.

The Court: I take it that in this case there was a petition filed with the Commissioner?

Mr. Nakamura: That is correct, Your Honor.

If Your Honor would care to see the wording of Section 151, I have a copy [*3] of that statute here, which I am prepared to hand up.

The Court: It says that they provide for a sum constituting the issue fee, or a portion thereof, which shall be paid within three months thereafter. Upon payment of this sum, the patent shall issue. If payment is not timely made, the application shall be regarded as abandoned.

Mr. Nakamura: That is correct.

The Court: Then it says that any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof.

Is that the notice of allowance?

Mr. Nakamura: The first one is the notice of allowance. It contains an estimated issue fee.

The Court: The second notice that they are talking about is the notice that more money is due, I take it?

Mr. Nakamura: That is correct; if the printing exceeded the estimate.

The Court: Yes.

The Court: Has this type of situation ever been litigated before in court?

Mr. Nakamura: To my knowledge, Your Honor, it has not. This is the first time that the question has arisen.

The Court: Now, what you have just shown me is the statute, itself, is that correct?

Mr. Nakamura: This is the statute, itself, that is correct, Your Honor. [*4]

The Court: All right, I will hear further from you, if you like.

Mr. Nakamura: Your Honor, we submit that under normal rules of statutory construction, there being no legislative intent to include receipt in the term "mailing," that the defendant has no authority to read the term into the statute in the light of the past construction of "mail" in the situation with which we are now concerned.

The Court: What is involved in resurrecting a patent which has been put in an abandoned category? Do you

have to file all over again?

Mr. Nakamura: Yes. If the applicant is willing to forego the benefit of having the earlier date, the date of his earliest application, then he can file at any time.

As in this particular case, if he filed today, the application would date from today.

The Court: What does this patent cover?

Mr. Nakamura: This is a patent on a doll, Your Honor. I believe, Your Honor, before I leave, I would like to point out that there is a drawing which accompanies the patent application. It is in the file. It is a part of Exhibit A, accompanying the defendant's motion to dismiss.

The Court: Did you file a response to the motion to dismiss?

Mrs. Sommer: [*5] Yes, we did, Your Honor. We filed an opposition to the motion to dismiss.

First, I would like to sort of point out the sequence that this case went through in the Patent Office, mostly because I think that it is very interesting.

The application was filed in December, 1965, and went through a normal course of prosecution up to the filing of notice of appeal and a brief upon appeal.

Sometime in October, specifically October 9, 1968, the examiner who was prosecuting the application called a Mr. W. S. Seward, who was a partner in Nolte & Nolte, and who was the attorney who was handling the application, and advised him that he was going to allow the case. That was October 9, 1968.

On October 10, 1968, the Patent Office sent out a paper, which is Paper 14 in this case, in which the Patent Office indicated that the prosecution in the case was closed and that a notice of allowance would shortly be forwarded. This is an official form of the Patent Office.

That form, which is Form P.O.L. 255, as I said, was mailed 10/10/68, and was addressed to Nolte and Nolte.

On that very same day another paper went out from the Patent Office, which was mailed to another address. It was [*6] mailed to the firm of Brown & Seward at 11 Park Road, New York City. That very day, two papers were mailed from the Patent Office: One, the form P.O.L. 255; the other, a Form 19. Both going to different addresses.

Thereafter, another paper was mailed from the Patent Office, this being Paper Number 15 and Form P.O.L. 37. This paper carries the date January 29, 1969, and this form is what is known as a Notice of Examiner's

Amendment.

This form says pretty much the same thing. It indicates some amendments that the examiner is entering pursuant to a conference had with Mr. Seward on 10/10/68, and says a notice of allowance will be forthcoming.

I think that this paper, which was addressed to Nolte and Nolte at 330 Madison Avenue, is interesting, because it carries not only the notation that the paper was typed on 10/31/68, but it was mailed on January 29, 1969.

I would like to point out that I mentioned that one paper was mailed to another address in this period. Two additional papers were mailed to Brown and Seward at 11 Park Road.

The Court: Who was the attorney for the applicant?

Mrs. Sommer: Originally, attorneys of record were Brown and Seward. During the prosecution, [*7] an associate power of attorney was filed, making Nolte and Nolte the attorneys of record.

I would like to point out, for example, that when notice of appeal was filed in this case, the notice of appeal carries an express written - typed notice which says:

All correspondence is to be addressed to Nolte and Nolte, 330 Madison Avenue.

The very next paper which was mailed by the Patent Office, which is what we call the appeal receipt, that gives the appeal number and which was mailed within about a week of that date, is mailed to Brown and Seward at 11 Park Road.

Despite the fact that the notice of appeal carries the express note: All correspondence to go to Nolte and Nolte, the appeal receipt was mailed to Brown.

So, we have a course of conduct throughout of the Patent Office's sending correspondence to different addresses.

Fortunately, the mail was rerouted by the Patent Office and the papers that I am referring to were received in the Office of Nolte and Nolte at 330 Madison Avenue.

I also want to point out - because the Patent Office made a big issue of the fact that notices of allowance are typed on one day and they carry the next mailing day and they are mailed [*8] out. It is presumed that they are mailed out on the next day - that the form P.O.L. 255, which I mentioned before, carries the typing date 10/31/68 and was mailed January 29, 1969. In other words, some three months later, this was mailed out of the Patent Office.

Mr. Nakamura, counsel for the Patent Office, mentioned that the rule which is involved, or the statute which is involved, is 35 U.S.C. 151, and that this requires that the notice of allowance be mailed.

Specifically, the statute says, "Mailed or given."

I have a copy of the statute here and the patent laws. It says, "If it appears that the applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant."

In other words, I think that it connotes a little bit more than just putting it in the mailbox. It connotes that it is either given or mailed. In other words, both terms appear in the statute.

Furthermore, the Patent Office has promulgated its own rules in connection with notice of allowance. An the rule is a little different than the Patent Office and puts a stricter construction - I am sure that I have the rule - yes. The rule [*9] which is involved, and this is from the Patent Office Rules, is Rule 311, and it is noted under "Notice of Allowance: If upon examination it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to him."

If the word "sent" is looked up in the dictionary - and we mentioned this in some of the papers - it indicates more than mailed. It indicates that it is going to be received.

Also, in connection with mail given or sent, Mr. Nakamura cited some cases.

We would like to point out that this very court, the District of Columbia, has, in a decision, Creasy versus the United States, and that is 4 F.Supp. 175, D.C.-Va. 1933, expressly set out that there is no notice unless it is received.

In other words, just merely putting it in the mail is not notice. The notice must be received.

The Court: Mrs. Sommer, did you receive the January 29th letter, that is January 29, 1969, that the application was being passed to issue by the examiner?

Mrs. Sommer: Yes, sir, we did.

The Court: What did you do when you got that?

Mrs. Sommer: We got that. I happen to have a copy of the correspondence here with me. Mr. W. S. Seward, [*10] who was a partner in the firm of Nolte and Nolte, was handed that in the course of - in other words, the mail is opened in a very specific manner. The papers are entered and a record is made of all mail that is received. If there is anything that the applicant must do -

in other words, if there is anything that we have to do, the office has to do - it is entered onto the outside of a file, and on the outside of the file, the date that the thing came in and the date for response appears.

Nothing appears on this outside of this file after the fact that an appeal brief was entered. There was an amendment also entered, which also appears.

There is no indication of notice of allowance receipt, because it was never received.

The Court: Is there any indication that the January 29th letter was received?

Mrs. Sommer: No; the only indication is that we have it and have the letter written by Mr. Seward, in which he advised the client that this notice had been received. There is nothing for the applicant to do when that is received.

The Court: What is the normal time span between this kind of a communication and the receipt of the notice of allowance?

Mrs. Sommer: Well, [*11] we have cited a case in this case. The patent is Tran Van Khai Patent. I have the number. It is Number 3498764. An instance there was 13 days.

We have also mentioned patent applications in our own file, where it has gone up to eight months. There is no statutory requirement that we inquire.

In other words, if a normal office action is received that there has been a notice promulgated by the Patent Office which says that within two months if nothing has happened you should write a status letter.

There is no requirement with respect to this notice that a patent will be issued on inquiring.

The Court: Don't most people, when they do not get the notice of allowance, promptly get on the telephone or write a letter or do something about inquiring about where it is.

Mrs. Sommer: I would say no.

In the same file, Tran Van Khai, which we referred to, the same procedure arose, and it is not conventional to inquire. Not in this.

The Court: It is my experience in dealing with the Government that if you know a letter is coming and you do not get it, you get on your horse.

Mrs. Sommer: We are now inquiring at the end of two months.

The Court: It does not matter whether [*12] it is the

Patent Office, or any other branch of Government: The Federal Power Commission, the Federal Communications Commission, Internal Revenue, any of these. If you know that something is going to happen and it does not happen and you have not received it, why, I think it is par for the course to call up and say: Look, we missed something.

Mrs. Sommer: Well, I have to admit that previous to this we had - in some cases the attorney would keep a record. Then he would inquire. But it was no general rule. We now have the general rule in the office that the Docket Clerk inquires at the end of two months.

I wanted to make another point in this case: There are a number of decisions in which this same issue came up, where the notice of allowance allegedly was not received. These decisions are in no way made public. In other words, they have not been published. This Tran Van Khai Case I referred to.

Mr. Nakamura served Mr. Douglas yesterday with a paper, Opposition by Defendant to Plaintiffs' Motion for Summary Judgement, in which a noted decision is mentioned, in which, in fact, the decision appears as Exhibit C, all going to this point of late payment of final fee.

And [*13] there is another one. I have the Patent Application Number. I do not have the number of the issued patent.

None of these decisions have ever been published by the Patent Office, by the agency. There is no record of them.

We would like to point out, therefore, that these decisions can not be relied upon, whether they are positive or negative, really, by the Patent Office, since there has been no notice, as is required by the Administrative Act and by the Public Information Section of the Administrative Act, which says that, specifically 552 under 2 (a), that each agency, in accordance with published rules, shall make available for public inspection a copy (a) a final opinion; (b) those statement of policy and interpretations which have been adopted by the agency and are not published by the Federal Register, so on and so forth. None of these decisions. There is a large number of them. We have referred to three right here. We can mention three right here. One of which for the first time I saw this morning, because I saw these opposition papers this morning. Two of which were obtained for us by Mr. Douglas through personal contacts.

In other words, you would never know [*14] that the Commissioner had decided favorably, and had

decided favorably in the Tran Van Khai Case, which is the exact same as the instant case; the exact same facts existant that Commissioner Reynolds decided in October 1969, I believe it was, that another notice of allowance would be forthcoming.

His decision is very simple. He says: On the facts in the case. His decision is dated October 30, 1969. It is in the file of U.S. Patent 3498764. He says: The renewed petition filed October 17, 1969, for the acceptance of a final fee in the above-entitled application has been considered. On the basis of the entire record, as now presented, it is thought proper to hold that a notice of allowance of the application was not duly mailed on November 15, 1968. Accordingly, the present action is to be treated as such a notice of allowance. Since the issue fee was paid on July 10, 1969, the patent will be issued in due course. The petition is granted to the extent indicated.

There is another one where the exact situation arose. Again Commissioner Reynolds issued the patent.

In other words, the Commissioner has, in situations which parallel this case on all fours, subsequently permitted [*15] the payment of the final fee which was due and issued a notice of allowance. The loss of a patent. I do not believe that it is germane to the issue, but we mentioned that this is a patent for a doll; specifically, it is for a walking doll, and a very important doll.

This application form has licenses all over the world.

In other words, I do not want to mention the assignee, because that gets into particulars which are not germane.

This is a very commercial patent; extremely important.

If the patent does not issue, we are now in the situation where there is really nothing under the recent decisions on know how and secret information, and so on. There is nothing left.

This patent has issued. For example, there are corresponding patents in other countries in the world. There is for sure I know in Germany. I am not sure of the other countries. As I say, it has been licensed all over the world.

The applicants have exhausted their remedy in the Patent Office and have filed petitions, renewed petitions, all of which have been denied by Assistant Commissioner Kalk on the grounds, first of all, that the statute prevents him from acting otherwise.

I just pointed out [*16] at least two cases where Assistant Commissioner Reynolds has also, as an arm of

the Patent Office, decided differently.

Also, the Patent Office feels that just mailing it and putting a copy of the notice of allowance with the word "mailed" on it is all that the Patent Office has to prove.

We have set out in considerable detail what the Patent Office does with respect to mailing a notice of allowance.

Number One, they send it to a typist, who types it on the day before it is dated. The typist in our case would have typed it. In all cases, it is universal procedure. Types it on one day, but types in another date. The thing is then sent to the mail room, and presumably is mailed out from the mail room. No record of it is made in the mail room; of its receipt in the mail room or of its actual mailing.

Any record which is entered into the file is entered from a card or tape which is made in the Notice of Issue Branch; not from the mail room.

So, we, as in Tran Van Khai, where they were sustained, where the appellant was sustained, do not believe that the Patent Office can rely on their saying that they just mailed it and that they have a record that they mailed it. [*17]

I pointed out in one case where they say that it was typed on one day and mailed three months later, in our own file. This presumably was typed one day and mailed the next day. It was never received in our office. There is no record of it anywhere.

I also want to point out that Mr. Nakamura said that usually these things are received. But there are instances where they are not received; where they are not correctly addressed, or misdirected, or who knows what, and get into the wrong office.

We do not feel that we have to establish that. We just have to prove that we never received it. It was never received in the office.

Inquiry was made at the Patent Office in connection with the prosecution of another application in another country, a corresponding application in another country.

Mr. Seward, who was handling it - I remember, it was Louden against the United States - he went and got the United States' file and saw that there was no notice of allowance. Then immediately the petition was filed.

The Court: Mr. Nakamura.

Mr. Nakamura: If I may, Your Honor, I would like to add some comments in rebuttal here.

First of all, with reference to these decisions in [*18]

other patents which Mrs. Sommers has referred to, and with reference, also, to her argument with respect to the Administrative Procedure Act, I would like to point out this: That these two decisions that she mentioned are in the patent files. As such, they are available to the public.

Now, it is true that we have not indexed them. But as Your Honor will appreciate from the number of cases which have come up on this point, it apparently would be a burden on the Patent Office to index such decisions.

Now, with respect to the first of those cases, the Tran Van Khai Case, I believe, is mentioned by Mrs. Sommer.

I would like to point out this fact, that the attorney in that case complained not only that he did not receive the notice of allowance, but he also complained that the firm was not shown correctly in the address.

So, in this case there was some possible indication that the Patent Office had not very properly mailed the notice of allowance.

The Court: Mr. Nakamura, the reason that Mr. Reynolds accepted the final fee in the Tran Van Khai Case was because of the fact that he was satisfied that the notice of allowance had not been received; is that not true?

Mr. [*19] Nakamura: Had not been duly mailed, Your Honor. I believe that was the comment.

The Court: He said not duly mailed?

Mr. Nakamura: Not duly mailed.

If one looks to the reasons that supported the attorney's petition - in my copy here, it would be on the 4th page, after the decision of Commissioner Reynolds; then the next to the last sentence of the petitioner says: If the Patent Office actually mailed a notice of allowance in the present case, how can it be so sure that it was mailed to the applicant's attorney, as 35 U.S.C. 151 requires, especially when it is ruled that the Patent Office copy of the notice of allowance did not even show the attorney's name correctly.

The Court: In this case, your own record shows that notice of allowance was mailed on a certain date?

Mr. Nakamura: Yes, it does, Your Honor.

The Court: It shows to whom it was mailed?

Mr. Nakamura: Yes, that is correct.

The Court: To Nolte and Nolte?

Mr. Nakamura: That is correct. We have a copy in the file papers that, perhaps, Your Honor may be interested in seeing just what that notice of allowance

looks like. I have the actual application file here.

The Court: What was mailed was presumably [*20] a carbon of that, I take it?

Mr. Nakamura: Yes, Your Honor; this is the original, and a carbon is mailed as a matter of practice.

There is one other point that I would like to make, Your Honor:

In our opposition, which was filed yesterday, there is attached Exhibit B, which is the last decision of the Assistant Commissioner in this particular case.

I would like the Court to note that in the last line on the first page Commissioner Kalk says: Petitioners are apparently the only ones who have complained about not receiving a notice of allowance mailed on February 20, 1969. 331 were mailed that day.

There is just one statement that I would like to make in closing, Your Honor:

There is a reason why Assistant Commissioner Reynolds allowed the petitions in the two cases that Mrs. Sommer has mentioned. There is equally a good reason why the petition in this case was denied.

The distinction is this: If there is any positive indication in the application filed, itself, that the Patent Office may have not properly mailed a notice of allowance, then the Commissioner will grant relief. But if there is no such indication, no such positive indication of improper mailing by the [*21] Patent Office of the Patent Office application, and there is only the allegation that the applicant did not receive the notice of allowance, then relief is denied.

The Court: Your proof of mailing is the possession of the ribbon copy of the notice of allowance, which is part of your file?

Mr. Nakamura: That is correct.

The Court: The fact of mailing the notice is entered some place else?

Mr. Nakamura: Yes, it is. It is on the face of the application filed. I don't know whether Your Honor noticed that. In the lower righthand corner there is a stamped in date of February 20, 1969.

There is a block there, I believe, that is labeled "Notice of Allowance." Date mailed: February 20, 1969. That is the date that it was mailed.

The Court: Who put that on there?

Mr. Nakamura: This would be placed on there by the issuing branch.

The Court: But they have no other record other than having put that stamp on there, is that correct?

Mr. Nakamura: Other than having kept a tally of the total number which were mailed that day, or each day, there is no record kept on specific applications.

The Court: Mr. Nakamura, is there any particular pattern about when notices of [*22] allowance are issued?

Mr. Seward's affidavit has four cases cited, one of which has an allowance notice sent after 13 days; another one was a month and 20 days; another one was four months and 21 days; another one is eight months and three days.

With respect to one of these, they mention a status letter which was sent and brought no response. The second status letter brought a telephone call from the examiner, giving the date of allowance, stating that the application was abandoned for failure to file an issue fee. In that case a petition to review is pending.

Mr. Nakamura: In answer to your question, Your Honor, there is no period, I believe, that one can count on from notification to the mailing of the notice of allowance. It fluctuates. It depends upon the work load. It depends upon the people there that particular day; whether they have gotten behind. I am afraid that it is not a predictable figure.

The Court: What about the status letters and telephone calls?

Mr. Nakamura: Telephone calls would be answered. Status letters generally are answered. But I would not say that they are invariably answered. That would not be correct.

The Court: What would be [*23] the effect on the Department if the rule were other than requiring the notice to be mailed, but also require that it be received?

Mr. Nakamura: Then I believe that we would have to grant a petition in every case that comes into the Patent Office complaining about failure to receive notice of allowance.

The Court: How many of those have you had in the past?

Mr. Nakamura: There are probably not too many, but I would not say for sure. I can say this much; that - well, no, I don't think that is a very good estimate. I was going to say that in addition to the two cases that I handed up to you, there is one other published Commissioner's Decision that I know about. There are a few others, but they all date back to the 1920's or earlier.

The Court: Those are Patent Office Gazette reported cases?

Mr. Nakamura: That is correct.

The Court: What I was thinking about is in your normal experience does this happen very often? There may have been some cases in situations where this has happened, and because of these decided cases they have not taken it further; or the subject matter might not have been sufficient to warrant going further. I was just wondering, as a matter of general [*24] experience, does this happen very often?

Mr. Nakamura: I am not personally experienced in this, Your Honor. But I am quite sure that there are, from time to time, cases coming up on this point. Just from casual conversation, I know this personally.

The Court: Well, I think that I have heard enough. I am going to deny the Government's motion to dismiss and grant the plaintiffs some kind of relief.

I am going to require the plaintiff to work out the form of the order with Mr. Nakamura, so that it will do the least damage to the Department's practice.

The reason why I am ruling as I am is because it is difficult for me to believe that the notice was or was not received, when these people, who have every interest in its receipt, apparently acted on the assumption that it never came.

I am perfectly willing to admit that the language of the statute and the decisions of the Patent Office are just as you stated, Mr. Nakamura.

But I think that in the rare case, such as this, that comes up, that, because of the fair administration of law by the Patent Office, it would permit these rare situations to be accommodated instead of relying on the strict letter of the statute. [*25]

So, I will charge you, Mrs. Sommer and Mr. Nakamura, to work it out and I will sign an order on it.

The reason that I am requiring you to do that is because of the fact that Mr. Nakamura is with the Patent Office and he has an important position down there. I am sure that he would not agree to an order that would go further than it has to. I do not know enough about patents to take the responsibility or trust my own judgment.

Mrs. Sommer: Thank you, Your Honor.

Mr. Nakamura: I believe that I understand Your Honor.

Jan. 4, 1971

ORDER

Upon consideration of the defendant's Motion to Dismiss and the plaintiffs' Motion for Summary Judgment and the hearing thereon, it is by the Court this 31st day of December 1970,

Ordered that (1) the defendant's Motion to Dismiss herewith is denied, (2) the plaintiffs' Motion for Summary Judgment herewith is granted, and (3) the defendant herewith is authorized to issue a notice of allowance in plaintiffs' patent application Serial No. 513,380, in suit.



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being mailed to Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313 on this 23 day of September, 2004.

Name: CAROL A. McALONIS

Signature: Carol A. McAlonis

Doc. 10529

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Craun, et al.)
Serial No. 09/839,049) Examiner: William K. Cheung
Filed: April 23, 2001) Group Art Unit: 1713
For: ODOR FREE POLYLACTIC ACID) Attorney Docket No.: 10529
MODIFIED AQUEOUS EMULSION)
PAINTS FREE OF VOLATILE)
COALESCING ORGANIC SOLVENT) Cleveland, OH 44115

September 23, 2004

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPORTING AFFIDAVIT

STATE OF OHIO)
County of CUYAHOGA)

Duly sworn, I, Dawn A. Madison, state that:

1. I am a Paralegal for The Glidden Company ("Glidden"), the assignee of the above identified U.S. Patent Serial No. 09/839,049.

2. I assist Glidden's Intellectual Property attorney with all matters before the U.S. Patent and Trademark Office.
3. I docket any and all deadlines from Office Actions or other correspondence that Glidden receives into our docketing system, Legal Star system. I docket any and all deadlines in the attorney's docket calendar and also record the dates in our Legal Star electronic database.
4. I did not open, nor did I receive the Notice of Allowance indicated as sent in the Notice of Abandonment reportedly mailed November 5, 2002 for the captioned patent application.
5. I first became aware that a Notice of Allowance and the subject issue fee when we received the Patent Office's Notice of Abandonment mailed March 17, 2003.
6. After receipt of the Notice of Abandonment, I contacted the Customer Service Center of Technology Center 1700 through a referral in contacting the USPTO, and I received copies of the Examiner's Amendment of October 31, 2002, the Notice of Allowance and Fees due mailed November 5, 2002, and the Notice of Allowability dated October 31, 2002. This receipt was by facsimile on and dated April 16, 2003 (attached).
7. Our office had not received the Notice of Allowance or the Notice of Allowability/Examiner's Amendment prior to April 16, 2003.
8. The docket entry for the Examiner's Amendment noting the "base date" was entered after the facsimile of April 16, 2003 was received.

Further, affiant say naught.

Dawn A. Madison
Dawn A. Madison

Sworn to and subscribed in my presence this 23 day of September,
2004.

Carol A. McAlonis
Notary Public

CAROL A. McALONIS
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Comm. Expires Oct. 23, 2005

Customer Service Center TC 1700
 Phone number: 703-306-5665
 Fax number: 703-305-1086

**United States Patent
 and
 Trademark Office**

To: Kenneth Stackel

Fax: 216-344-8935 Pages: 16

Phone: 216-344-8705 Date:

Re: 09/839, 049 CC:

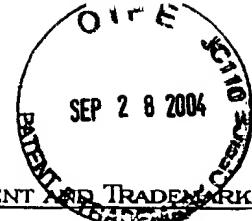
From: Bessie Bowe

Urgent For Review Please Comment Please Reply Per your request

IF YOU HAVE DIFFICULTY IN RECEIVING THIS FACSIMILE,
 PLEASE CONTACT THIS OFFICE BY USING THE PHONE
NUMBER PRINTED ABOVE. Thank you.



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,049	04/23/2001	Gary P. Craun	10529	3640

7590 03/17/2003

Eileen T. Mathews
Law Department, The Glidden Company
925 Euclid Avenue
900 Huntington Building
Cleveland, OH 44115

EXAMINER

CHEUNG, WILLIAM K

ART UNIT

PAPER NUMBER

1713

DATE MAILED: 03/17/2003

P1#6

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231

APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTORNEY DOCKET NO.

09/1839,049

EXAMINER

ART UNIT

PAPER NUMBER

PHG

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

Applicant's failure to timely file a proper response to the Office letter mailed on _____.

A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of ____ month(s)) which expired on _____.

A proposed response was received on _____, but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).)

No response has been received.

Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.

The submitted issue fee of \$_____ is insufficient. The issue fee required by 37 CFR 1.18 is \$_____.

The issue fee has not been received.

Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.

The proposed new formal drawings filed _____ are not acceptable.

No proposed new formal drawings have been received.

The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below:

**ABANDONMENT
 CONTACT PERSON IS:
 TOM HAWKINS
 305-8380**



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20251
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,049	04/23/2001	Gary P. Craun	10529	3640
7590	11/05/2002			EXAMINER
			CHELING, WILLIAM K	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 11/05/2002

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
 (application filed on or after May 29, 2000)

The patent term adjustment to date is 135 days. If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the term adjustment will be 135 days.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)

Any questions regarding the patent term extension or adjustment determination should be directed to the Office of Patent Legal Administration at (703)305-1383.



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20251
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,049	04/23/2001	Gary P. Craun	10529	3640
7590	11/05/2002		EXAMINER	
Thomas M. Schmitz 500 Huntington Bldg. 525 Euclid Ave. Cleveland, OH 44115 UNITED STATES			CHEUNG, WILLIAM K	
			ART UNIT	PAPER NUMBER
			1713	
				DATE MAILED: 11/05/2002

Notice of Possible Fee Increase on October 1, 2002

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2002, then the amount due may be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there may be an increase in fees effective on October 1, 2002. See Revision of Patent and Trademark Fees for Fiscal Year 2003; Notice of Proposed Rulemaking, 67 Fed. Reg. 30634, 30636 (May 7, 2002). Although a change to the amount of the publication fee is not currently proposed for October 2002, if the issue fee or publication fee is to be paid on or after October 1, 2002, applicant should check the USPTO web site for the current fees before submitting the payment. The USPTO Internet address for the fee schedule is: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of any fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after October 1, 2002 (or mailed with a certificate of mailing on or after October 1, 2002), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability



Application No.	Applicant(s)
09/839,049	CRAIJN ET AL.
Examiner	Art Unit
William K Cheung	1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- This communication is responsive to IDS (Paper No. 3).
- The allowed claim(s) is/are 1-31.
- The drawings filed on _____ are accepted by the Examiner.
- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None
 of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) The translation of the foreign language provisional application has been received.
- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

7. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. CORRECTED DRAWINGS must be submitted.
 - (i) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No. _____.
 - (ii) including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (iii) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

<input checked="" type="checkbox"/> 1 Notice of References Cited (PTO-892)	<input type="checkbox"/> 2 Notice of Informal Patent Application (PTO-152)
<input type="checkbox"/> 3 Notice of Draftsperson's Patent Drawing Review (PTO-948)	<input type="checkbox"/> 4 Interview Summary (PTO-113), Paper No. _____.
<input checked="" type="checkbox"/> 5 Information Disclosure Statements (PTO-1449), Paper No. 3	<input checked="" type="checkbox"/> 6 Examiner's Amendment/Comment
<input checked="" type="checkbox"/> 7 Examiner's Comment Regarding Requirement for Deposit of Biological Material	<input checked="" type="checkbox"/> 8 Examiner's Statement of Reasons for Allowance
	<input type="checkbox"/> 9 Other



Application/Control Number: 09/839,049
Art Unit: 1713

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DETAILED ACTION

Restriction / Election

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1 to 31, drawn to a coating composition, classified in class 524, subclass 284.
 - II. Claims 32-47, drawn to a polymerization process, classified in class 524, subclass 352.
2. The inventions are distinct, each from the other because of the following reasons:
Inventions Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make other and materially different product such as non-ambient paint coating composition.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Application/Control Number: 09/839,049
Art Unit: 1713

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4. During a telephone conversation with Brian M. Kolkowski (Registration 36,847), on September 23, 2002, a provisional election was made with traverse to prosecute the invention of Group I, claims 1 to 31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-47 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

EXAMINER'S AMENDMENT

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Application/Control Number: 09/839,049
Art Unit: 1713

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Authorization for this examiner's amendment was given in a telephone interview with Eileen T. Mathews (Registration No. 41,973) on October 30, 2002.

7. Claim 12 (line 2), replace "hydracrylic" with "hydroacrylic".
8. Cancel non-elected claims 32-47.

Allowances

9. Claims 1-31 are allowed.
10. The following is an examiner's statement of reasons for allowance:

As of the date of this office action, the examiner has not located or identified any reference that can be used singularly or in combination with another reference including the closest prior art of Ohara et al. (US 5,880,254) and Floyd et al. (US 5,326,808) to render the present invention anticipated or obvious to one of ordinary skill in the art.

The invention of claims 1-31 relates to an ambient paint coating composition substantially free of volatile coalescing solvent, the paint having a film forming polymeric binder comprising by weight: an aqueous emulsion polymeric film forming matrix polymer of copolymerized ethylenically unsaturated monomers; and at least 3%

Application/Control Number: 09/839,049
Art Unit: 1713

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of a low molecular weight poly(hydroxyl alkanoic acid) oligomer of copolymerized hydroxy alkanoic acid having from 2 to 4 carbon atoms and being an external modifier of the matrix polymer, the oligomer having number average molecular weight between about 300 and 10,000 and a T_g below 0°C, the oligomer having terminal alkyl aliphatic ester groups where the alkyl chain has from 3 to 20 carbon atoms, where the mixture of the oligomer and the matrix polymer are film forming and provide an air dry coating composition substantially free of organic coalescing solvent.

The closest prior art Ohara et al. (abstract) teach a poly(alkanoic acid) or poly(lactic acid) having a weight average molecular weight of 1000 or less which overlaps with applicants' claimed molecular weight can be made. Since the molecular weight properties of the poly(lactic acid) as disclosed in Ohara et al. is substantially identical to the poly(alkanoic acid) as claimed, the examiner has a reasonable basis to believe that the claimed glass transition temperature of below 0 °C is inherently possessed by the disclosure to Ohara et al. However, Ohara et al. are silent on an ambient paint coating composition containing poly(alkanoic acid) and is substantially free of volatile coalescing solvent. Therefore, it would not be apparent to one of ordinary skill in the art to use the polylactic acid teachings in Ohara et al. to obtain applicants' ambient paint coating invention of claims 1-31.

Application/Control Number: 09/839,049
Art Unit: 1713

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Floyd et al. (abstract) disclose an aqueous ambient dry paint coating based on vinyl acetate matrix polymer containing an oligomer selected from a polyurethane or a polyester having a T_g below -20 °C and a number average molecular weight between 200 and 20,000. However, Floyd et al. are silent on an ambient coating composition containing a poly(alkanoic acid) because Floyd et al. are clearly silent on a homopolymer or copolymer containing an aliphatic hydroxy carboxylic acid. According to applicants' specification (page 5, 3rd paragraph), a poly(alkanolic acid) oligomer and poly(hydroxy acid) oligomer are equivalent terms and are homopolymers or copolymers of aliphatic hydroxy carboxylic acid having from 2 to 4 carbon atoms. Therefore, it would not be apparent to one of ordinary skill in the art to use the ambient dry paint coating teachings of Floyd et al. to obtain applicants' invention of claims 1-31 which relates to an ambient paint coating composition containing a poly(alkanoic acid) oligomer.

In view of the reasons set forth above, the invention of claims 1-31 is allowed.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (703) 305-0392. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

Application/Control Number: 09/839,049
Art Unit: 1713

Page 7

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-5885 for regular communications and (703) 305-5885 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

WKC
William K. Cheung
October 31, 2002

D. J. Wu

DAVID J. WU
EXAMINER
ART UNIT 1713
TELEPHONE (703) 308-2450
FAX (703) 305-5885

Please type a plus sign (+) inside this box →

JAN 30 2002

PTO/SB/08A (10-96)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it

Substitute for Form 1449A/PTO				Completion If Known	
				Application Number	09/7839,049
				Filing Date	April 23, 2001
				First Named Inventor	Craun
				Group Art Unit	1713
				Examiner Name	
				Attorney Docket Number	10529
INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(use as many sheets as necessary)</i>					
Sheet	5	of	7		

U.S. PATENT DOCUMENTS

Examiner Initials/ Name	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Pages, Column(s), Line(s) Where Relevant Passages or Relevant Figures Appear
		Number	Kind Code ² (if known)			
	5,326,808			Floyd, et al.	07-05-1994	
	5,346,948			Floyd, et al.	09-13-1994	
	5,422,392			Floyd, et al.	06-06-1995	
	5,470,906			Craun, et al.	11-28-1995	
	5,470,946			Hefner, Jr. et al.	11-28-1995	
	5,728,761			Kuyana, et al.	03-17-1998	
	5,770,682			Ohara, et al.	06-23-1998	5
	5,821,327			Oota, et al.	10-13-1998	
	5,880,254			Ohara, et al.	03-09-1999	

~~RECEIVED~~

FOREIGN PATENT DOCUMENTS

**Examiner
Signature**

Date
Considered

10/2/02

***EXAMINER:** Initial if reference considered, whether or not citation is in compliance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

³ Enter Office that issued the document, by the two letter
code, if different from above. See attached Kind of U. S. Patent Documents.

¹Unique citation designation number. ²See attached *Kinds of U.S. Patent Document*.
³For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial
code (WIPO Standard ST.3). ⁴Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.13 if
possible. ⁵Applicant is to place a check mark here if English language Translation is attached.

Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231.
DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioners for Patents, Washington, DC 20231.

(Information Disclosure Statement by Applicant (PTO/SB/08A) (1443A/PTO) [6-2]—page 1 of 1)

O
SEP 28 2004
USPTO

Application/Control No.

09/839,049

Applicant(s)/Patent Under

Tee Elimination

CRALIN ET AL.

Notice of References Cited

Examiner

William K Cheung

Art Unit

1713

Page 1 of 1

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A US-5,326,808	07-1994	Floyd et al.	524/457
*	B US-5,880,254	03-1999	Ohara et al.	528/483
C	US-			
D	US-			
E	US-			
F	US-			
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

FOREIGN PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

NON-PATENT DOCUMENTS

Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)

*	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)

Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

SEP 28 2004

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE
 Commissioner for Patents
 Washington, D.C. 20231
 Fax (703)746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 7 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

TO (RENT CORRESPONDENCE ADDRESS) (Note: Legibly mark-up with any corrections or use Block 1)

7590 11/05/2002

Thomas M. Schmitz
 900 Huntington Bldg.
 925 Euclid Ave.
 Cleveland, OH 44115

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
 I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,049	04/23/2001	Gary P. Craun	10529	3640

NAME OF INVENTION: ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS EMULSION PAINTS FREE OF VOLATILE COALESCING ORGANIC SOLVENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) IN USE	DATE DUE
nonprovisional	NO	\$1280	\$300	\$1580	02/05/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHEUNG, WILLIAM K	1713	524-284000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).	2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.
(1) Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.	1. _____
(1) "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.	2. _____
	3. _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

Please Note: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) individual corporation or other private group entity government

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7590

11/05/2002

Thomas M. Schmitz
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EXAMINER

CHEUNG, WILLIAM K

ART UNIT

CLASS-SUBCLASS

1713

524-284000

DATE MAILED: 11/05/2002

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,049	04/23/2001	Gary P. Crum	10529	3640

TYPE OF INVENTION: ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS EMULSION PAINTS FREE OF VOLATILE CONDENSING ORGANIC SOLVENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1280	\$300	\$1580	02/05/2003

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

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Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

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